

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- x  
SECURITIES INVESTOR PROTECTION :  
CORPORATION, :  
Plaintiff-Applicant, :  
v. :  
BERNARD L. MADOFF INVESTMENT :  
SECURITIES LLC, : SIPA Liquidation  
Defendant. : No. 08-01789 (SMB)  
: (Substantively Consolidated)  
----- x

**STIPULATION AND ORDER APPOINTING AN ARBITRATOR  
TO RESOLVE CONFIDENTIALITY DISPUTES BETWEEN THE TRUSTEE AND  
CERTAIN FAIRFIELD GREENWICH ENTITIES PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(C) AND  
GENERAL ORDER M-390 RULE 9.1**

WHEREAS:

- A. In connection with the above-captioned liquidation proceeding and its related adversary proceedings, the Trustee obtained discovery from Defendants, affiliates, and third parties subject to certain confidentiality protections that restrict the Trustee's use of information contained in documents those parties designated as confidential.
- B. Section 10 of the Litigation Protective Order dated June 6, 2011 ("Litigation Protective Order") prohibits the Trustee from "communicat[ing] in any way" information obtained from documents designated as confidential.
- C. The Trustee represents a number of issues or disputes have arisen with certain producing parties regarding the confidential status of documents.

D. Pursuant to the Litigation Protective Order, the Trustee requested an informal conference with the Court, which was held on March 18, 2015. At the conference, the Court directed the parties to confer with the relevant producing parties regarding a process for expeditiously resolving the disputes pertaining to the confidential designation of documents and the scheduling of the submissions under the Scheduling Order.

E. Included in the issues regarding the confidential status of documents are two documents produced by Fairfield Greenwich Limited and Fairfield Greenwich (Bermuda) Limited (collectively "Fairfield").

F. Counsel for the Trustee and Fairfield conferred regarding a procedure for review of the documents produced by Fairfield which were designated as confidential at the time of their production to the Trustee.

NOW, THEREFORE, subject to the approval of the Court, it is hereby STIPULATED AND AGREED by the Trustee and Fairfield:

1. Michael Young is appointed as Arbitrator to resolve the confidentiality disputes regarding the Fairfield produced documents.

2. Within two (2) business days of the Arbitrator's appointment, the Trustee shall submit the two documents produced by Fairfield that the Trustee seeks to have dedesignated as confidential for *in camera* inspection to the Arbitrator, along with any summary or explanation of why the documents or any portion thereof should be dedesignated. Fairfield may submit a letter responding to the Trustee's request within five (5) business days of the Trustee's submission explaining why the documents should remain designated confidential. The Trustee may submit a written reply letter within two (2) business days of Fairfield's response letter, if any. The arbitrator may or may not, at his option, thereafter hold a telephonic conference with

the Trustee and Fairfield to consider the merits. Whether or not a telephonic conference is held, the Arbitrator shall rule on whether the documents or any portion thereof should remain designated as confidential or any other restrictions on their use within six (6) business days of the final submission to the Arbitrator.

3. The Arbitrator shall preserve, as a record of activities, all written submissions received from or sent to the Trustee and Fairfield.

4. The costs of the Arbitrator shall be paid equally by the Trustee and Fairfield.

5. The rulings of the Arbitrator shall be binding on the Trustee and Fairfield, if so ordered by the Court. The Trustee and/or Fairfield may request confirmation of or appeal from any ruling of the Arbitrator by submitting a letter to the Court, copying the relevant party and the Arbitrator, within five (5) business days from the date such ruling is issued. Any opposing party shall file its response within three (3) business days of such submission to the Court. There shall be no other submissions by the Trustee or Fairfield concerning the Arbitrator's ruling.

6. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York  
May 20, 2015

BAKER & HOSTETLER LLP

By: s/ Karin S. Jenson

Karin S. Jenson

kjenson@bakerlaw.com

45 Rockefeller Plaza  
New York, New York 10111  
(212) 589-4200

*Attorneys for Irving H. Picard, Trustee for the  
Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities  
LLC, and the estate of Bernard L. Madoff*

SIMPSON THACHER & BARTLETT LLP

By: s/ Mark G. Cunha

Mark G. Cunha

mcunha@stblaw.com

425 Lexington Avenue  
New York, New York 10017  
(212) 455-2000

*Attorneys for Fairfield Greenwich Limited  
and Fairfield Greenwich (Bermuda) Limited*

Dated: New York, New York  
May 21<sup>st</sup>, 2015

SO ORDERED.

/s/ STUART M. BERNSTEIN

THE HONORABLE STUART M. BERNSTEIN  
UNITED STATES BANKRUPTCY JUDGE